

EXHIBIT 1

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Securities and Exchange
Commission,

Plaintiff,

v.

23 Civ. 1346 (JSR)

TERRAFORM LABS PTE LTD., et
al.,

Oral Argument

Defendants.

New York, N.Y.
November 30, 2023
3:30 p.m.

Before:

HON. JED S. RAKOFF,

District Judge

APPEARANCES

SECURITIES AND EXCHANGE COMMISSION

Attorneys for Plaintiff

BY: DEVON STAREN

JAMES CONNOR

LAURA E. MEEHAN

CARINA CUELLAR

CHRISTOPHER CARNEY

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Attorneys for Defendants

BY: DOUGLAS W. HENKIN

LOUIS PELLEGRINO

MARK CALIFANO

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(Case called)

MS. STAREN: Devon Staren for the Securities and
Exchange Commission.

MR. CONNOR: Good afternoon, your Honor. James Connor
for the S.E.C.

MS. MEEHAN: Good afternoon, your Honor. Laura Meehan
for the S.E.C.

MS. CUELLAR: Good afternoon, your Honor. Carina
Cuellar for the S.E.C.

MR. CARNEY: Good afternoon, your Honor. Christopher
Carney for the S.E.C.

MR. LANDSMAN: Good afternoon, your Honor. Roger
Landsman for the S.E.C.

THE COURT: So who is minding the store back at the
office?

Go ahead, counsel.

MR. HENKIN: Good afternoon, your Honor. Douglas
Henkin for the defendants.

MR. PELLEGRINO: Good afternoon, your Honor. Louis
Pellegrino for the defendants, and I believe we'll be joined by
paralegal Sarah Gonzalez in a moment.

THE COURT: That's fine.

MR. CALIFANO: Mark Califano for the defendants, your
Honor.

THE COURT: Good afternoon. So we're here for an

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1 argument on summary judgment. This was originally supposed to
2 occur at 4:00, but the Senate of the United States confirmed a
3 new judge for the Southern District of New York a day or two
4 ago and a bunch of judges, including myself, have been asked to
5 meet with her at 4:30 today to help train her in our ways, from
6 which she will never recover. So we have an hour. So I'm
7 going to ask counsel not to reiterate what is already in their
8 excellent papers, but just to pick one or two points that they
9 particularly want to emphasize on the cross-motions for summary
10 judgment.

11 Before we get to that, though, there's a matter that
12 regretfully I have to raise just to make it a matter of record.
13 So in the motion papers that were submitted by the defense in
14 support of their motion for summary judgment, there was
15 included a declaration of Mr. Raj Unny. It was a 26-page
16 declaration with a modest 185 pages of exhibits attached
17 thereto. And the S.E.C., on October 31, called and said this
18 was really an unauthorized surrebuttal report that should not
19 be allowed because not only had expert discovery and
20 depositions been concluded but all discovery had been
21 concluded, and no application had ever been made to file a
22 surrebuttal report. The defendant said, no, this is not a
23 surrebuttal report. It's not an expert report. It's simply a
24 declaration that is being submitted in support of their motion
25 for summary judgment. So I said, well, what I would do is read

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1 it and then determine whether I should consider it on summary
2 judgment.

3 Subsequently, we had a Daubert hearing, and although I
4 have not issued the full opinion, I have issued the bottom-line
5 which included striking the testimony of Mr. Unny as an expert.
6 And although by that time I had read his declaration submitted
7 in support of summary judgment, I think based on what defense
8 counsel had represented to me over the phone, it should have
9 played and really should not play any role in the Court's
10 Daubert decision. Nevertheless, for what it's worth, that
11 decision would have been the same so far as Mr. Unny is
12 concerned either way.

13 When I was reading the papers on summary judgment, I
14 returned to Mr. Unny's declaration, and it appears to the Court
15 unequivocally to be a surrebuttal expert opinion that, of
16 course, could never have been inquired into on deposition by
17 the plaintiffs because it was issued without permission after
18 all the discovery had been completed. And it says, for
19 example, in paragraph two, "Dr. Edman has subsequently filed
20 the rebuttal report of Dr. Edman on October 13, 2023." Let me
21 pause there to say that was with the full permission of the
22 Court after hearing from both sides. But continuing the quote,
23 "I have been asked by counsel for Terraform Labs, or TFL, and
24 Dr. Do Hyeong Kwon to review and assess the opinions put
25 forward by Dr. Edman in this rebuttal report." That certainly

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1 sounds like an unauthorized surrebuttal expert report, which
2 the S.E.C. had no ability to take a deposition about because it
3 was submitted without authorization and after discovery had
4 closed.

5 Nevertheless, troubled though I am very much by the
6 representations that defense counsel made to me on the phone, I
7 have decided to consider this report for purposes of summary
8 judgment, but I'm not considering it for purposes of Daubert
9 based on defense counsel's representation to me that it wasn't
10 part of Daubert. Anything defense counsel wants to say about
11 any of that?

12 MR. HENKIN: No, your Honor. I think what you've done
13 in characterizing it is something that defense understands.

14 THE COURT: All right. Very good. So we have
15 cross-motions. Let me hear first from the S.E.C.

16 MS. STAREN: Would your Honor like me to stay here or
17 go to --

18 THE COURT: Go there. I think everyone can hear you
19 better from there.

20 MS. STAREN: This time I did not drop my papers.

21 Good afternoon, your Honor, and May it Please the
22 Court, we're here today because defendants Do Kwon and his
23 company Terraform Labs orchestrated a multibillion-dollar
24 fraud. Defendant's fraud is not novel, and it is not
25 complicated. Quite simply, they created a security, LUNA.